

**Statement of Peter Kaskell before the State Legislative Hearing on 3/23/09
Concerning Proposed Municipal Ethics Legislation, Raised Bill No. 6696**

I am a forty-year resident of the town of Wilton and serve as Vice Chair of the Wilton Council on Ethics which is charged with the enforcement of Wilton's Code of Ethics that covers its municipal officials and employees. By way of background, I served for much of my professional career as the Vice President and General Counsel of Olin Corporation. My years thereafter have included a major focus on work in the encouragement of mediation as a very effective tool for dispute resolution without the high costs of litigation and with increased likelihood of restored relationships among the parties.

I have read and concur in his criticism of the Bill with the written statement of Stephen Hudspeth, member of the State Legislative Task Force on Municipal Ethics and Chair of the Wilton Council on Ethics, which is also being presented before this hearing.

I agreed to serve on the Wilton Council after having been a member of the ad hoc town committee charged two years ago with drafting the new code of ethics for Wilton that took effect a year ago to bring the town's 25-year-old code into alignment with current best practices. In fact, that 25-year-old code was the second iteration of a code for Wilton, the first one having been adopted almost 20 years before that, in the 1960s.

Our drafting committee knew, of course, that over 150 Wilton citizens serve as unpaid volunteers on the town's boards, commissions, councils, etc. and that those volunteers are the lifeblood of our town's government, as our First Selectman Bill Brennan described when he testified at the Legislature-appointed Task Force on Municipal Ethics' public hearing in West Haven and as I also testified through a written statement entered into the record during that public-hearing process. Thus, our drafting committee determined at the outset of its work that its proposed code would be clear in its wording, reasonable in its terms, and concise and readily comprehensible by all, both town officials and employees on the one hand and the general public on the other, and that it also would not discourage participation by volunteers in our town's government.

After studying the ethics codes of numerous other Connecticut towns and also various model codes, our committee drafted five substantive rules, as follows:

1. Conflicts of interest. Whenever a matter arises as to which an official or employee has a financial or personal interest (as those terms are defined very broadly in the code), he or she shall disclose that interest and recuse as to the matter.
2. Gifts. No official or employee shall accept anything of value that could reasonably be expected to influence him or her in any town matter.

3. Use of town property. No official or employee shall use town property (not available to the general public on the same terms as to the official or employee) for his or her personal benefit.

4. Use of town position. No official or employee shall use his or her position to further a financial or personal interest.

5. Representation of private interests before one's own board. No official shall act on behalf of private interests before a board on which he or she serves or in litigation involving that board. This prohibition continues for a period of six months after the person's service on the board has ended.

This entire substantive section of the Wilton code, including its definitions, spans only 2½ pages. We believed as a drafting committee, having reviewing other codes and enforcement situations that have arisen, that these five rules cover the key areas of concern in municipal ethics. They also have the advantage of being succinct and easily comprehended by any reader. I understand that these five provisions track the recommendations of the Task Force's Report to the Legislature. Naturally, in egregious situations, especially in the area of gifts and use of town property for personal purposes, criminal laws apply as well that will presumably supersede code enforcement if invoked by the enforcers of our criminal laws.

Certain of our town's employees, such as our police, were already covered by codes tailored to their functions and in many cases significantly more specific as to rules than these five. Where unionized town employees are covered by such codes that have rules at least as strict as the town code's and also have provision for the making and adjudication of citizen complaints, the town code explicitly provides that it does not cover them. Please note also that in the area of school employees, especially educators, we found that the subject of coverage intersects with state laws that supersede town codes and provide their own rules and enforcement mechanisms. I call this to your attention simply because we found it to be a complex subject. Thus, our town code's exemption for unionized employees covered by a code that is at least as strict as the town's and that has citizen complaint and enforcement mechanisms was also included specifically to address this situation.

There are three matters with respect to municipal codes of ethics that I would like to address briefly here: prevention of unethical conduct, enforcement, and suggested matters for Task Force action.

Prevention of Unethical Conduct

Prevention of unethical conduct in the first place is the primary objective of Wilton's municipal code. Whenever doubt exists as to possible conflicts of interest or other matters, officials and employees are encouraged -- under a specific section of the code for this purpose -- to present the facts in writing to the Wilton Council on Ethics which may then hold hearings to flesh out the facts before acting promptly to issue an

advisory opinion on which the official or employee may rely should there be any complaint with respect to his or her conduct, provided that his or her conduct has conformed with the conduct permitted under the opinion. Our last advisory opinion was issued just this month -- within ten days of the filing of the request.

Over the 44 years that Wilton has had a code, officials have requested the council's advice as needed. As a consequence there have been very few complaints filed. While some seem to think that the absence of complaint filings is a bad thing in that it reflects community fear of filing (which may, in fact, be the case in some municipalities), Wilton has a very outspoken citizenry who feel no reluctance to criticize town officials in town meetings, in letters to the editor, and in personal calls and letters. Thus, had there been grounds for more complaints, I have no doubt that the complaints would have been filed. It is my strong belief that the advisory opinion process has been a great service to our town. The fact that these opinions are issued locally and can be issued very promptly are real incentives to their use. It is for this reason, among others, that I am a strong advocate both of local codes and of local interpretation and enforcement of them.

Enforcement

The enforcement process is likewise, of course, a critical part of any code, and the Bill lacks any provisions covering local enforcement or even requiring it. In that area, the new Wilton code goes into considerable detail under the heading "Complaints." Previous Wilton codes did not have the detail of this one on the specifics of how the enforcement mechanism should proceed, including the use of a probable-cause-based initial-review process as supported by several fairly recent Superior Court decisions on municipal ethics complaint proceedings. The Wilton code is quite clear in its delineation of due-process elements consistent with these decisions and with practices that conform with constitutional requirements in the area generally and especially in the enforcement of criminal laws. Thus, included in those due process elements is probable-cause review by the Council at the outset of the consideration of a complaint. The code also does not afford party status to the complainant in order to allow the Council to control the process in such a way as to protect the rights of the party who is the subject of the complaint.

Decisions that lead to the dismissal of a complaint by the Council are not reviewable by other bodies of town government, but findings of violation and of sanctions for those violations are subject to review by our Board of Education for appropriate action as to school officials and employees (for the reasons discussed above as to significant pre-existing state legislation in the education area) and by our Board of Selectmen for appropriate action as to all other officials and employees. Sanctions available to the Council include dismissal from appointive office or employment, censure, required disclosures of conflict and recusal, and fines, though it is our understanding that the maximum fine a town may impose under state law for the violation of any town ordinance (such as this code) is only \$99. Clearly, state legislation should provide for higher fines in this area, though we believe that public humiliation of an official or employee from even a censure usually is sufficient in itself to be a strong deterrent.

The five members of Wilton's Council on Ethics are well-known in town and trusted for their good judgment and freedom from external influences. They are prohibited during their terms of service on the Council from serving on any other town board or in any other town elective, appointive, or employment position. The Code requires that the Council consist of no more than three members (out of the five) registered in the same party. The current composition consists of two Democrats, two Republicans and one Independent. The local enforcement elements of our town code are very important to our citizens generally and volunteers specifically. In fact, the prospect of enforcement of the Code, either at the initial or the appellate level, by a body removed from Wilton whose members are unknown to Wilton's citizenry would likely deter volunteers' service in town government.

Suggested Legislative Action

I strongly urge that proposed legislation on municipal ethics explicitly exempt sensible town codes that include local enforcement and meet certain minimum standards that are simply expressed and easy to read and to follow. The substantive rules of Wilton's code listed above serve as a useful model. It is my opinion that Wilton officials and citizens can be expected to support state legislation that (1) includes such an exemption of local municipal codes that meet those minimum standards and does so in clear and straightforward language as the Bill does **not**, (2) includes provision for local enforcement that the Bill does not even address, and (3) provides for the issuance of advisory opinions -- once again, a subject that the Bill does not even address.

In the ambit of reasonable requirements, I would like to focus briefly on the matter of required financial disclosures, which the Bill fortunately does **not** provide for. Legislation that would require officials who volunteer for service to make disclosures of income and assets would be absolutely disastrous for volunteer service in our town government. I for one certainly would not have agreed to serve on the Wilton code drafting committee and the Council on Ethics if such disclosure requirements had been in force. Under Wilton's code, an official must disclose any conflict of interest that arises and recuse himself or herself from deliberation and decision-making on the matter. However, full financial disclosure of income and assets is an entirely different matter for reasons having nothing to do with ethical conduct and everything to do with privacy.

I hope that these points may be of help in the Legislature's deliberations. Let me close with my thanks to you all for your service in this important work.

Dated: March 19, 2009

PETER H. KASKELL
226 Nod Hill Road, Wilton, CT 06897